



**U.S. Army Corps  
Of Engineers**  
Norfolk District

CENAO-CO-R  
03-RP-19

## **STATE PROGRAM REGIONAL PERMIT**

**Effective date:** August 14, 2003

**Expiration Date:** August 14 , 2008

### **Authorized Activities:**

1. Submerged utility lines and associated dredging or excavation.
2. Aerial transmission lines and other overhead lines.
3. Groins and spurs or baffles and associated beach nourishment.
4. Maintenance dredging for previously authorized projects.
5. Bulkheads, riprap and associated backfill and/or excavation, including bulkhead repair and/or replacement, and bioengineering projects to prevent erosion.
6. Open-pile piers at community, commercial or government facilities for recreational or commercial use.
7. Boat ramps and accessory structures, including any fill or excavation for installation.
8. Recreational or Commercial boathouses and covered boat lifts.
9. Mooring piles/dolphins, fender piles and camels.
10. Crab pounds.
11. Submerged sills and associated beach nourishment.
12. Low breakwaters and associated beach nourishment.
13. Aquaculture/Mariculture activities.
14. Commercial moorings associated with a permitted project and temporary in nature.
15. State owned and operated artificial reefs within State waters.

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to perform certain work in waters of the Commonwealth as described herein.

In order to obtain authorization for any of the activities covered by this regional permit, the applicant must complete a Joint Local-State-Federal Permit Application. If the proposed activity qualifies for this regional permit, the Corps of Engineers will send the applicant a letter acknowledging the qualification and stating that the applicant must first obtain a permit (not a waiver) from the Virginia Marine Resources Commission and/or the local wetlands board before the proposed work may begin. (Those activities on the Potomac River extending beyond the mean low water line must be authorized by the Maryland Department of Natural Resources and/or the Potomac River Fisheries Commission in order to comply with this regional permit.) In the event the proposed project or any portion of the project receives a waiver (or exemption under the grandfather clause), the project would not qualify for this regional permit and an individual Corps permit will be required.

This regional permit recognizes that the listed activities are usually of State or local impact only and that State or local agencies are the appropriate regulatory bodies. However, it is conceivable that in rare instances the District Engineer may determine that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR 325) for a particular project which would normally qualify for this regional permit. The Norfolk District will monitor the activities authorized under this regional permit in order to evaluate their cumulative impacts.

This regional permit shall not be interpreted as authorizing any work other than that which is contained in this document. All work undertaken outside the following conditions, standards and limitations will require separate Department of the Army authorization.

TO QUALIFY FOR THIS REGIONAL PERMIT, THE ABOVE ACTIVITIES WOULD HAVE TO SATISFY ALL OF THE SPECIAL AND GENERAL CONDITIONS LISTED BELOW:

**SPECIAL CONDITIONS:**

**1. Submerged utility lines and associated dredging or excavation:**

a. For the purpose of this regional permit, a submerged utility line is defined as any pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. This regional permit encourages, where feasible, the use of directional drilling techniques for utility lines that otherwise meet the special conditions.

b. This regional permit does not include the dredging of access channels. No submerged utility line installation which involves either temporary or permanent stream rechannelization is authorized by this regional permit. Also, water intake and outfall structures are not authorized by this regional permit. Such work will require separate Department of the Army authorization.

c. When the blasting of bedrock is necessary in order to create a trench for the installation of a utility line, it shall all be performed within the same day, if possible. The Virginia Department of Environmental Quality, Water Division (at telephone (804) 527-5000) must be notified at least one week prior to blasting so that a representative may be at the site to observe blasting operations and evaluate fish kills, if necessary.

d. Utility lines should be routed to avoid disturbance to vegetated wetlands. Wetlands unavoidably impacted during the installation of the pipeline must be restored to their original elevation. Displaced herbaceous wetland species which do not naturally revegetate within one year from the completion of the project must be replanted to the satisfaction of the District Engineer.

e. Under this regional permit, no submerged utility line installation is authorized between 1 March and 30 June in portions of Virginia's river systems where anadromous fish spawning and nursery habitat have been documented. Applicants will be notified by the Corps of Engineers as to the applicability of this condition to their proposal.

f. Submerged utility lines shall be routed to minimize disturbance to beds of submerged aquatic vegetation. Under this regional permit, no utility line installation is authorized between 1 March and 30 June in areas where major beds of submerged aquatic vegetation occur. Communities of submerged aquatic vegetation impacted during pipeline installation must be restored to their original elevation. No dredged or excavated material shall be stockpiled on submerged aquatic vegetation beds. Applicants will be notified by the Corps of Engineers as to the applicability of this condition to their proposal.

g. Submerged utility lines must be adequately anchored in deep enough water or buried deep enough below the bottom to prevent their being a hazard to navigation.

h. The pouring of concrete for backfill of utility line trenches must be accomplished within a cofferdam unless the activity can be performed completely in the dry, such as during seasonal low flow periods. The introduction of uncured concrete into surface waters is prohibited.

i. Note that the discharge of material for backfill or bedding for submerged utility lines is authorized by Nationwide Permit 12 - Utility Line Backfill and Bedding, provided the requirements contained in the Norfolk District Regional Condition are met. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996. The Norfolk District Regional Condition is as follows: "Whenever possible, excavated material shall be placed on an upland site. However, when this is not feasible, temporary stockpiling is hereby authorized provided that: (a) All excavated material stockpiled in a vegetated wetland area is placed on filter cloth, mats, or some other semi-permeable surface. The material will be stabilized with straw bales, filter cloth, etc. to prevent reentry into the waterway. (b) The excavated material must be placed back into the trench to the original contour and all excess excavated material must be completely removed from the wetlands within 30 days after the utility line has been installed through the wetlands area. Permission must be granted by the District Engineer or his authorized representatives if the material is to be stockpiled longer than 30 days."

j. Note that the discharge of material for the construction of submerged utility transmission line footings is authorized by Corps Nationwide Permit 25 - Structural Discharge. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996.

k. Note that the discharge of material for the construction of temporary cofferdams is authorized by Corps Nationwide Permit 33 - Temporary Construction, Access and Dewatering, provided the requirements contained in the "Notification" General Condition are met. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996.

Separate notification is not required for temporary cofferdams in association with submerged utility lines covered by this regional permit provided the application includes a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources as outlined in Nationwide Permit 33.

l. For linear pipeline projects, the applicant must supply the U. S. Fish and Wildlife Service with information concerning the intended route of the entire project so that they may, if necessary, exercise their authority under Section 9 of the Endangered Species Act.

## 2. Aerial transmission lines and other overhead lines:

a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Minimum additional clearance above clearance required for bridges

<u>Nominal system voltage, kilovolt:</u>	<u>Feet</u>
115 and below.....	20
138.....	22
161.....	24
230.....	26
350.....	30
500.....	35
700.....	42
750 to 765.....	45

Clearances for communication lines, stream gauging cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Overhead lines which require fill not authorized by Corps Nationwide Permit 25 and/or 33, or projects which require dredging for construction access will not qualify for this regional permit.

b. Note that the discharge of material for the construction of aerial transmission line footings is authorized by Corps Nationwide Permit 25 - Structural Discharge. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996

c. Note that the discharge of material for the construction of temporary access fills is authorized by Corps Nationwide Permit 33 - Temporary Construction, Access and Dewatering, provided the requirements contained in the "Notification " General Condition are met. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996. Separate notification is not required for temporary access fills in association with aerial transmission lines covered by this regional permit if the application includes a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources as outlined in Nationwide Permit 33.

d. In addition, the Federal Aviation Administration has responsibility for the marking of aerial transmission lines. Therefore, for those projects involving such work, an appropriate application should be submitted to the Federal Aviation Administration Eastern Regional Office, Air Traffic Division, JFK International Airport Federal Building, Jamaica, New York 11430 (Telephone 212-995-3390).

e. For linear aerial transmission line projects, the applicant must supply the U. S. Fish and Wildlife Service with information concerning the intended route of the entire project so that they may, if necessary, exercise their authority under Section 9 of the Endangered Species Act.

### **3. Groins and spurs or baffles constructed along with and connected to groins and associated beach nourishment:**

a. For this regional permit, groins are defined as structures constructed perpendicular (or nearly so) to a shoreline and extending seaward from the shoreline whose sole purpose is to protect the shoreline from erosion. Groins may merely stop further erosion of a shoreline or they may actually build a sand beach by trapping sand moving in the near shore zone. A jetty is a structure which may appear similar to a groin, but whose primary purpose is to stabilize and protect an inlet or harbor. Jetties are not included in this regional permit. Spurs and baffles are defined as short (less than 20 feet) structures constructed perpendicular to groins for the sole purpose of dampening diffracted wave energy. Groins may be constructed of quarry stone, gabion baskets, concrete or timber. As the design and location of groins is site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.

b. This regional permit authorizes beach nourishment landward of the groins provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this Regional Permit is one acre.

c. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.

d. The beach nourishment material will not be placed in or affect any wetlands, submerged aquatic vegetation or shellfish beds.

e. The District Engineer will require an individual Department of the Army permit for any project which he determines to have greater than minimal individual or cumulative impacts.

f. You should be aware that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously nourished, the Corps will need to consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.

g. Special Conditions 1 - 8 for Discharges and Special Conditions 9 and 10 for Structures apply to this activity.

### **4. Maintenance dredging for previously authorized projects:**

a. This regional permit authorizes maintenance dredging of projects which received an individual Department of the Army permit for the initial dredging. Areas to be dredged and dredged depths shall not exceed those specified by the original authorization or exceed controlling depths for ingress/egress whichever is less. This regional permit does not eliminate the requirement to obtain a Virginia Water Protection Permit from the Virginia Department of Environmental Quality, Water Division for this activity.

b. For maintenance dredging to qualify under this regional permit, the dredged material must be disposed of in an upland area which has been properly designed to contain the material.

c. If the applicant proposes to use the Craney Island Dredged Material Management Area for placement of the dredged material, the special conditions which must be adhered to and forms which must be completed in order to use Craney Island will be added to this permit for those projects for which it applies.

d. Under this regional permit, periodic maintenance dredging may be performed for 5 years from the date of the acknowledgment letter in order to coincide with the expiration of the Virginia Marine Resources Commission maintenance dredging permit which is issued for a maximum of 5 years.

e. The Norfolk District will be advised in writing by the permittee at least two weeks before each maintenance dredging activity is undertaken so that the intended disposal area may be inspected.

f. Barges and scows used to transport dredged material may be filled only to a point where no overflow occurs. No overflow pipes are allowed.

g. A copy of this permit must be on board the vessel used for the transportation and placement of the dredged material.

h. Special Conditions 1-8 for Discharges apply to this activity if the dredging is performed by hydraulic method.

**5. Bulkheads, riprap and associated backfill and/or excavation, including repair and/or replacement of existing deteriorated bulkheads and bioengineering projects to prevent erosion:**

a. The work must be necessary to combat an existing erosion problem.

b. The total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the activity along the shoreline in linear feet (e.g. 100 square feet maximum for a 100-foot-long bulkhead.)

c. The structure and backfill must be placed as closely to the shoreline as is practicable. No material may be placed in excess of the minimum necessary for erosion protection.

d. The activity must not impair surface flows.

e. Only clean, non-metallic, non-organic, non-floatable fill may be used.

f. The activity must be a single and complete project.

g. This regional permit also covers all bulkhead repair and/or replacement up to two feet channelward of existing deteriorated bulkheads which are still functional. For sheet pile bulkheads, this shall generally mean that at least fifty (50) percent of the sheeting must be standing. This authorization includes no limitation on length, nor does it exclude bulkheads which may result in the filling of wetland vegetation as long as there is an apparent existing erosion problem. As above, the total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the activity along the shoreline in linear feet. This total does not include wetlands landward of the existing bulkhead. This portion of the work complies with Corps Nation Wide Permit Number 3. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the

Federal Register dated December 13, 1996. The filling of wetlands behind free-standing bulkheads that have never been backfilled is prohibited as part of this permit, and will require an individual Department of the Army permit.

h. For projects where bioengineering is to be utilized in lieu of bulkheading or riprap, grading or excavating wetlands shall be limited to one square foot of vegetated wetlands per linear foot of shoreline.

i. Special Conditions 1-8 for Discharges apply to this activity.

**6. Open-pile piers at community, commercial or government facilities for recreational or commercial use:**

a. This authorization covers all open-pile piers, docks, wharfs associated with the construction or expansion of any community, commercial, or government facility whose primary use is commercial or recreational. This would include, but not be limited to, piers at seafood processing facilities, boat repair facilities, marine terminals, military installations or military associated operational facilities utilized for training, aggregate handling facilities, and other non-recreational facilities. (Marine railways are excluded from this regional permit.)

b. If the original purpose of the structure or facility changes, the permittee must submit a request for a permit modification (i.e. a recreational marina to a grain loading facility or coal handling facility).

c. This work does not qualify for the Regional Permit if it involves any dredging or filling. In that event, an individual Department of the Army permit will be required. If dredging is proposed, it may qualify for the District's Letter of Permission -2 (LOP-2).

d. Special Conditions 9 and 10 for Structures apply to this activity.

**7. Boat ramps and accessory structures, including associated fill and excavation necessary for installation:**

a. This regional permit covers all boat ramps (concrete or open-pile timber), whether private, public, commercial or government-owned. Accessory structures are covered for all but private boat ramps. For this regional permit, accessory structures include catwalks, pilings and small piers whose sole purpose is to make it easier to get boats into or out of the water. Permanent or semi-permanent mooring facilities are not covered.

b. This permit authorizes excavation and/or filling within the limits of the boat ramp only (e.g. for bedding). Dredging or filling for access to the ramp is not covered under this regional permit and will require separate Department of the Army authorization. Authorization of the boat ramp does not imply that a future dredging proposal to provide access to the structure would be approved.

c. All boat ramps and accessory structures shall be located so as to eliminate or minimize impacts to vegetated wetlands.

d. The pouring of concrete for the construction of boat ramps must be accomplished within a cofferdam unless the activity can be performed completely in the dry, such as during lake drawdown periods. The introduction of uncured concrete into surface waters is prohibited.

e. Special Conditions 1-8 for Discharges, and Special Conditions 9 and 10 for Structures apply to this activity.

## **8. Recreational or commercial boathouses and covered boat lifts:**

a. This authorization covers any boathouse or covered boat lift whose purpose is recreational or commercial.

b. If the original purpose of the structure or facility changes, the permittee must submit a request for a permit modification (i.e. a recreational marina to a grain loading facility or coal handling facility).

c. This work does not qualify for the regional permit if it involves any dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of the boathouse or covered boat lift does not imply that a future dredging proposal to provide access to the structure would be approved.

d. Special Conditions 9 and 10 for Structures apply to this activity.

## **9. Mooring piles/dolphins, fender piles and camels (wooden floats serving as fenders alongside piers):**

a. This authorization includes all such structures, either isolated or part of large facilities, whose primary purpose is commercial or recreational. This would include, but not be limited to, mooring piles, dolphins, fender piles, and camels at seafood processing facilities, boat repair facilities, marine terminals, military installations and other non-recreational facilities. Pilings installed to establish osprey nests are also included. Should primary use of the permitted structure change, a permit modification must be requested.

b. This work does not qualify for the regional permit if it involves dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of such structures does not imply that a future dredging proposal to provide access would be approved.

c. Special Conditions 9 and 10 for Structures apply to this activity.

## **10. Crab pounds:**

a. Crab pounds are authorized by this regional permit, but crab pounds in Mailboat Harbor and adjacent waterways at Tangier Island, Virginia must be constructed outside the hatched areas shown on the map entitled "Structures at Mailboat Harbor" which may be obtained from the Corps Eastern Shore Field Office in Accomac, Virginia 23301, at telephone (757) 787-3133.

b. Special Conditions 9 and 10 for Structures apply to this activity.

## **11. Submerged sills:**

a. For the purpose of this regional permit, a submerged sill is defined as a low, detached structure constructed near shore and parallel to the shoreline for the purpose of building up an existing beach by trapping and retaining sand in the littoral zone. Because a sill acts like a natural bar, it is most effective when constructed at or near the mean low water line and low enough to allow wave overtopping.



b. Submerged sills are usually constructed of sand bags, but may be constructed of riprap, gabion baskets, concrete, or timber. The materials should be of sufficient weight or adequately anchored to prevent their being dislodged and carried about by wave action. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of sills. As the design and location of sills is site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.

c. The beach nourishment area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.

d. Submerged sills may not be connected to the upland or constructed in conjunction with groins or other erosion control structures. Such structures will require individual Department of the Army review.

e. This regional permit authorizes beach nourishment landward of the sills provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this Regional Permit is one acre.

f. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.

g. The beach nourishment material will not be placed in or affect any wetlands, submerged aquatic vegetation, or shellfish beds.

h. The District Engineer will require an individual Department of the Army permit for any project which he determines to have greater than minimal individual or cumulative impacts.

i. You should be aware that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously nourished, the Corps will need to consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.

j. Special Conditions 1 - 8 for Discharges and Special Conditions 9 and 10 for Structures apply to this activity.

## **12. Low breakwaters:**

a. For the purpose of this regional permit, a breakwater is defined as a structure constructed parallel to and channelward of a shoreline for the purpose of reducing incoming wave energy.

b. This regional permit authorizes low breakwaters constructed close to shore for the purpose of erosion protection by reducing wave height and thereby reducing the erosive power of the waves reaching the shoreline. This permit does not include high breakwaters constructed farther offshore for the purpose of creating quiet water for the protection of a boat harbor.

c. The beach nourishment area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.

d. Under this regional permit, a breakwater may be a single structure or a series of structures separated by gaps, but may not be connected to the upland or constructed in conjunction with other land attached structures. Such structures will require individual Department of the Army review.

e. Breakwaters may be constructed of quarry stone, gabion baskets, concrete or timber. However, as breakwaters are barriers to the forces of waves, they should be massive enough to resist the full power of the maximum expected wave energy. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of breakwaters. As the design and location of breakwaters is site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.

f. Included in this permit are floating breakwaters which filter energy from the incoming waves as they pass through the device, thereby reducing wave energy reaching a shoreline or harbor. Floating breakwaters should be adequately anchored to prevent their being dislodged by wave action.

g. This regional permit authorizes beach nourishment landward of the breakwaters provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this Regional Permit is one acre.

h. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.

i. The beach nourishment material will not be placed in or affect any wetlands, submerged aquatic vegetation, or shellfish beds.

j. The District Engineer will require an individual Department of the Army permit for any project which he determines to have greater than minimal individual or cumulative impacts.

k. You should be aware that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously nourished, the Corps will need to consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.

l. Special Conditions 1 - 8 for Discharges and Special Conditions 9 and 10 for Structures apply to this activity.

### **13. Aquaculture/Mariculture Activities:**

a. This authorization is limited to the bottom and suspended culturing and harvesting of bivalve mollusks in the intertidal and subaqueous areas of navigable waters. Activities covered include: deployment and maintenance of buoys, rafts, trays, and other equipment associated with the activity, and work including temporary wet storage, and harvesting.

b. The aquaculture activity area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.

c. Note that traditional shellfish seeding activities are authorized by Nationwide Permit 4 - Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities, provided the activity does not occur in wetlands or vegetated shallows. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996.

d. No aquaculture activity shall occur within beds of submerged aquatic vegetation or saltmarsh, nor shall such vegetation be damaged or removed. Should an area become colonized by submerged aquatic vegetation or saltmarsh after an authorized aquaculture activity is installed, the activity shall be allowed to remain, however, no expansion into newly colonized areas is authorized by this regional permit. Information on the location of submerged aquatic vegetation can be obtained from the Norfolk District Corps of Engineers (at telephone (757) 201-7652) and from the Virginia Institute of Marine Science (at telephone (804) 642-7332).

e. An aquaculture activity shall be deemed not applicable under this regional permit if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This is meant to include nesting, feeding or resting activities by migratory birds identified at 50 CFR 10.13.

f. An aquaculture activity shall be deemed not applicable under this regional permit if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.

g. No aquaculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.

h. Special Conditions 9 and 10 for Structures apply to this activity.

#### **14. Commercial moorings associated with another project and temporary in nature.**

a. This permit may only be used if the request is directly associated with a permitted project such as a bridge, construction, or dredging project.

b. This authorization is valid only for the duration of the associated project. Once the project is completed, the mooring must be removed.

c. Special condition 9 and 10 for structures apply to this activity as well as the general conditions listed in the regional permit.

#### **15. State owned and operated artificial reefs within State waters**

a. This authorization is limited to State owned and operated reefs located exclusively in waters of the Commonwealth of Virginia and are limited to fin fishing reefs and reefs established for oyster replenishment or research.

b. The Corps of Engineers will evaluate each proposal to ensure impact to the environment, navigation, endangered species, historical resource or special aquatic sites are not more than minimal.

c. Materials used in the construction of these reefs are limited to materials historically used for shell and fin fishing reefs. They must be free of hazardous materials unless specifically authorized by the Corps of Engineers. Activities covered include but are not limited to deployment and maintenance of buoys, rafts, trays, and other equipment associated with the activity, and work including temporary wet storage and harvesting.

d. Special condition 9 and 10 for structures apply to this activity as well as the general conditions listed in the regional permit.

#### **SPECIAL CONDITIONS FOR DISCHARGES:**

1. If the activity involves a discharge of dredged or fill material, the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230.

2. No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, asphalt etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

3. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.

4. No discharge of dredged or fill material may occur in areas of concentrated shellfish production.

5. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

7. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

8. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

#### **SPECIAL CONDITIONS FOR STRUCTURES:**

9. The permittee must install and maintain, at his expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, telephone number (757) 398-6230.

10. The permittee hereby recognizes the possibility that the structures permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damages.

**GENERAL CONDITIONS:**

1. This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative.
3. (a) No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.  
  
(b) Authorization of an activity by a this permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g. an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service.
4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.
5. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify the Norfolk District of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
6. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.

7. No activity may cause more than a minimal adverse effect on navigation.
8. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
9. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
10. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.
11. Permittees are expected to fully comply with Virginia Regulation 680-21-00, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality. Any conditions contained in the 401 certificate become part of the Corps regional permit verification.
12. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.
13. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
14. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
15. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.
16. The permittee shall maintain the structure or fill authorized herein in good condition and in reasonable accordance with the plans and drawings attached hereto, including maintenance to ensure public safety.
17. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.
18. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.
19. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.
20. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data proves to be materially false or materially incomplete, the

authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.

21. Limits of this authorization:

- a. This permit does not obviate the need to obtain other Federal, State or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.
- e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 201-7735.

22. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

23. The Norfolk District may reevaluate its decision on your authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 19 above).
- c. New information is obtained which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 1319 c, d, and g).

24. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

25. This letter of permission, unless further modified, suspended or revoked, will be in effect until August 14, 2008. Upon expiration, it may be considered for revalidation.

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Date

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Yvonne J. Prettyman-Beck  
Colonel, Corps of Engineers  
Commanding